

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4223 OF 2005.

Saraswati Vidyalaya Union.

... Petitioner.

V/s.

Mrs.Sandhya Venkatesh.

... Respondent.

Mr.Neel Helekar with Ms.Sushma Joshi i/b.
M/s.Haresh Mehta & Co. for the petitioner.

Rajesh More for the respondent.

CORAM: V.C.DAGA, J.

DATED: 16th December 2005.

JUDGMENT :

. This petition is directed against the judgment and order dated 29th April, 2005 passed by the learned Presiding Officer, School Tribunal, Pune Region, Pune in Appeal No.7 of 2005, whereby the appeal was allowed, order of termination dated 27th January, 2005 came to be set aside with further direction to continue the appellant/respondent No.1 herein to allow her to continue to work as Head Mistress.

Factual Matrix :

2. The factual matrix of the case reveals that the petitioner society vide its order dated 20th December, 2003, has appointed the respondent

as Headmistress on probation in the English medium section of the primary school run and managed by them. According to the petitioner, the respondent was adopting an attitude of confrontation and arrogance in discharge of her duties. She used to take certain decisions unilaterally and in a high handed manner due to which, according to the petitioner, the name of the school was tarnished. Therefore, the services of the petitioner came to be terminated.

3. The order of termination dated 27th January, 2005 reads as under:

"This has reference to your letter of Appointment dated 20th Dec 2003 as the Headmistress of the Primary School with effect from 1 Feb 2004.

The terms and conditions of your employment were specified in the said letter with sufficient clarity together with the term emphasizing that the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules made there under shall apply.

Your Service condition, above referred to in the letter of appointment and the Act specifically provided for a probation period of One year. You joined the services of the school with effect from 3rd Feb 2004. As on date, you are on probation.

On an overview of your performance and conduct as the headmistress of the primary

school, it has been noticed that you consistently take up an attitude of confrontation and arrogance, particularly in your letter to the school committee Office Bearers. On every occasion, you have been given to understand very clearly the improper way of behaviour and you have also apologized for your misdemeanor. You are also acting in excess of Authority as the Headmistress of the Primary School and thereby you have put the management to an embarrassing situation.

While we do not wish to judge the correctness or otherwise of the action taken by you it is distressing to note that as the Headmistress of the Primary school, you have never taken the school committee of the management of the Primary School in confidence. Your actions therefore are unilateral and highhanded and have prevailed upon the management, as that was the decision taken by you. This has resulted in tarnishing the good name of the school and lowering the esteem of the general public to the management of the school.

In such circumstances, it is not desirable for the management to continue the services of a responsible person like you in the manner stated above. On these grounds, the management of the school cannot repose confidence in you and your services.

Apart from the fact that no such statutory notice is necessary, the management of the Primary school by way of abundant caution and courtesy to you wish to give you one month's wages in lieu of notice, vide Cheque No.275587 dated 27th Jan 2005 for Rs.11476/- (Rs. Eleven thousand four hundred & seventy six only) with specific instructions that your services remains terminated with effect from 27th Jan 2005.

Kindly further be advised that the reasons assigned in Para 4 and 5 are illustration examples required to be recorded to justify the decision of termination of your services, as a probationer, by the

management to demonstrate the bonafide exercise of Authority by the management.

Your Salary for the entire month of Jan 2005 is enclosed vide Cheque No.275586 dated 27-1-2005 for Rs.10496/= (Rupees Ten thousand four hundred and ninety six only).

4. Being aggrieved by the aforesaid order, respondent filed appeal bearing No.7 of 2005 before the School Tribunal, Pune Region, Pune ("Tribunal" for short) and also prayed for interim relief.

5. The Tribunal had granted ad-interim injunction against the petitioner restraining it from acting upon the order of termination. The Tribunal after hearing rival parties, on 4th February, 2005 was pleased to pass another ad-interim order directing the petitioner to allow the respondent to continue to work as Head Mistress. The petitioner filed its written statement before the Tribunal opposing the appeal on merits.

6. The learned Presiding Officer of the Tribunal after hearing rival parties on merits vide judgment and order dated 29th April, 2005 was pleased to allow the appeal holding that the order

of termination is punitive and, therefore, directed reinstatement of respondent in the post of Headmistress

Consideration :

7. Having heard learned counsel for the petitioner and having examined the wordings of the order of termination, it is not at all difficult to reach to the conclusion that the order of termination was punitive and cast stigma on the working and conduct of the petitioner. It was, thus, rightly set aside by the Tribunal and, as a consequence thereof, the Tribunal was perfectly justified in directing reinstatement of respondent in the post of Head Mistress.

8. After hearing the petition for admission and after disclosing the mind to the petitioner that the Court is not inclined to entertain the petition, the petitioner sought some time to take instructions from one of the office bearers of the petitioner-society, who was present in the Court, as to whether or not the petitioner would like to press their petition. Request made in this behalf was granted and, in second session, this petition

was called out to know the reaction of the
petitioner- society.

9. The learned counsel appearing for the
petitioner- society, however, in second half,
prayed for orders on merits and attempted to make
last desperate submission contending that if the
order of termination is punitive order, then the
petitioner- society be given opportunity to prove
misconduct before the Tribunal by setting aside
the impugned order. The matter be remitted back
to the Tribunal so as to enable the petitioner to
avail an opportunity to prove the misconduct
before the Tribunal.

10. The learned counsel for the petitioner
relied upon three judgments of this Court in
P.D.L.C. of Com. & Eco., Bombay v.
A.M.Rangaparia, 1988 Mh.L.J. 530; **Bal Shikshan**
Mandal v. Poonam, 2002 (4) Mh.L.J. 848 and
S.Wankhede....Foundation v. Pratibha, 2005 (3)
Mh.L.J. 304 without knowing that the last two
judgment are overruled by the Division Bench of
this Court in its judgment (unreported) in Writ
Petition No.924 of 2005 (**Gurumaharaj Shikshan**
Prasarak and another v. Jalindar s/o. Mahadeo

Kedar and others). The last submission made is liable to be rejected for more than one reason.

11. Firstly; the Division Bench of this Court in **Gurumaharaj Shikshan Prasarak** (supra) while dealing with the reference arising out of disagreement between two learned Judges of this Court ruled that under the provisions of sections 10 and 11 of the M.E.P.S. Act, the management has no right to lead evidence/ additional evidence to prove misconduct. The Division Bench Judgment being binding on me, the submission made and cases relied upon by the learned counsel for the petitioner cannot be accepted.

12. Secondly, the case of **A.M.Rangaparia's** (cited supra) cannot be applied to the proceedings under the M.E.P.S. Act. While deciding reference, the Division Bench in the case of **Gurumaharaj Shikshan Prasarak** (supra) has held that the School Tribunal is an appellate tribunal and the ratio laid down in **A.M.Rangaparia's** case has no application to the cases governed by the provisions of the M.E.P.S. Act and Rules framed thereunder.

13. Thirdly, assuming that the petitioner was entitled to prove misconduct, even then considering the stand taken by the petitioner-society before the Tribunal that the action is not punitive but it was an action of termination simplicitor, it was not obligatory on the part of the Tribunal to call upon the petitioner to prove misconduct. It was, however, open for the petitioner to make proper prayer, when the matter was pending before the Tribunal. At the relevant time Division Bench Judgment referred to hereinabove was not in the field.

14. The petitioner even in this petition did not concede that the impugned order is punitive. The entire petition is founded on the basis that the impugned order is not at all stigmatic order but it is an order discharging probation for unsatisfactory work. In the entire petition there is no whisper that the petitioner society wanted or wants to prove misconduct. There is no alternate prayer made in the petition. If the petition is based on the pleading that the order of termination is simplicitor and it is not punitive, then the oral prayer made by the learned counsel for the petitioner, at this stage, to

allow it to prove misconduct before the Tribunal travels beyond the scope of the pleadings and the petition and the same cannot be granted. The last minute submission made is simply to get over the adverse order of reinstatement and to protract litigation in the name of proving misconduct.

Thus, the last contention raised by the petitioner is not bonafide. It is liable to be rejected.

15. It is, however, made clear that if the petitioner decides to hold enquiry afresh after constituting proper enquiry committee in accordance with the M.E.P.S. Act and Rules framed thereunder, then it would be an independent action taken by the petitioner- society. This order shall not come in way of the petitioner society.

16. The petition is, thus, devoid of any substance. It is dismissed in limine with no order as to costs.

(V.C. DAGA, J.)